THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.1537 of 2000

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Dated:08.11.2005

Between:

Kovvuri Chella Reddy, S/o. Nagi Reddy,
Pentapadu Village, West Godavari District, and others.

..... PETITIONERS

AND

State of Andhra Pradesh , Rep. by its Principal Secretary,
Panchayat Raj Wing, Secretariat,
Hyderabad, and others.

.....RESPONDENTS

HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.1537 of 2000

ORDER:

The ten petitioners are residents of Pentapadu Village, West Godavari District. They are aggrieved by the action of respondent Nos.3 to 5 in proposing to convert the existing puntha/pathway in the Village into a burial ground. Therefore, they seek a writ of Mandamus to restrain those officers from acting contrary to the provisions of Sections 85 to 91 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act').

The fact of the matter is not much in dispute. The petitioners own agricultural lands in Survey Nos.146, 147, 148 and 159 in Pentapadu Village. So as to reach their lands and also for the purpose of thrashing, they use the puntha in Survey Nos.140 to 149, which is known as Pentapadu-Darsiparru Puntha (hereinafter referred to as 'Darsiparru Puntha' for brevity). They allege that some of the villagers made a representation to the fifth respondent for allotment of land for another burial ground in Darsiparru Puntha, and even while the said request was under consideration, the dead body of Tadigadapa Tataiah, who died on 27.11.1999, was buried in the Puntha. A complaint was made to the Revenue Divisional Officer, who visited the

place and openly announced that puntha would be allotted for burial ground. When on 04.12.1999 another corpse was buried in the said puntha, a complaint was given to the P.S.Pentapadu and a case under Sections 447 and 426 of the Indian Penal Code, 1860, was registered. The petitioners, subsequently, filed an application, being W.P.M.P.No.14218 of 2000, for amending the writ petition so as to challenge the order of the District Panchayat Officer, dated 28.01.2000, purporting to demarcate a portion of the land in Survey No.147 for burial ground.

The Sarpanch of the Gram Panchayat, Pentapadu, the fifth respondent herein, filed a counter affidavit. The various allegations made by the petitioners are admitted. It is further stated that the existing burial ground in the land admeasuring Acs.4.57 cents in R.S.Nos.95/2, 96/1, 97/1, 98/2 and 99/2 is not overcrowded with graves and that there is no necessity to notify any other burial ground. It is also averred that the Gram Panchayat is ready to discharge its statutory duties and functions according to the requirement of the villagers, and that at no point of time the fifth respondent notified puntha or part of the puntha as burial ground.

The Mandal Revenue Officer, Pentapadu, filed a counter affidavit on behalf of respondent Nos.1 to 4. It is stated that in respect of burials and burial grounds, the Gram Panchayat alone has got powers and respondent Nos.2 to 4 have no power either to create any burial ground or to close any burial ground. The fact that there is a puntha in R.S.Nos.140 to 149 is admitted. It is also stated that the total extent of puntha is about Ac.1.63 cents, and if a part of the puntha is allotted to the burial ground for cremation of the dead bodies of the persons belonging to Madiga Community, there would not be any prejudice to the petitioners. It is alleged that Smt.Velagala Ganga Vijaya Laxmi and three others filed O.S.No.374 of 1999 on the file of the Court of the Principal Junior Civil Judge, Tadepalligudem, for perpetual injunction restraining the defendants (persons belonging to Madiga Community) from trespassing into the puntha, which is still pending. The plaintiffs therein obtained *ad interim* injunction in I.A.No.1712 of 1999 dated 14.12.1999, and prevented the persons from burying the dead in the puntha. The puntha is nearer to the Harijan colony and they are using it as burial ground since very long time. When people of Madiga Community were prevented from burying the dead, it resulted in law and order problem. Therefore, the fifth respondent got the entire puntha surveyed and issued eviction notices to those people who occupied the puntha. The District Panchayat Officer, by order dated 28.01.2000, demarcated the land in Survey Nos.147/7, 147/9 and 147/10 for the purposes of puntha, burial ground and cart track respectively. As the petitioners have no right on the puntha land, no prejudice would be caused to the petitioners by allotting a part of the puntha (Ac.0.36) for burial ground.

The learned Counsel for the petitioners, learned Assistant Government Pleader for Panchayat Raj and the learned Standing Counsel for Gram Panchayat are heard. This Court also perused the necessary material. The only point that arises for consideration is whether puntha (pathway) can be converted into a burial ground, and if so, which is the competent authority to resort to such conversion.

Sections 85 to 91 of the Act deal with burials and burial grounds in panchayat

area. Under Section 86 of the Act unless and until a licence is obtained from the Gram Panchayat, no place can be used for disposal of the dead by the private and public, nor a new burial ground can be constructed or established. Section 89 of the Act prohibits every person from burying or burning or otherwise disposing of any corpse in any place within two hundred meters of a dwelling place or any source of drinking water supply other than a place registered, licensed by the Gram Panchayat. Therefore, the puntha, which is admittedly being used as pathway to go to the agricultural lands, cannot be used for burial ground. Indeed, this position is not denied by the Pentapadu Gram Panchayat, who filed the counter affidavit admitting that there is no necessity for establishing a new burial ground, and that if necessary, the Gram Panchayat would discharge the statutory duties in accordance with law. In view of the legal position – and there is no dispute on this – that it is only the Gram Panchayat, which is entrusted with the duty to regulate burials and burial grounds, this point need not be dilated further. Insofar as the averments in the counter affidavit filed by the Mandal Revenue Officer is concerned, having regard to the provisions of the Act, this Court holds that it was improper for the Revenue Divisional Officer or the Mandal Revenue Officer to have initiated proposals for conversion of Ac.0.36 of land in Survey No.147/9 of Pentapadu Village as burial ground. It was improper for the District Panchayat Officer to have demarcated in such manner without even consulting the Gram Panchayat. As rightly averred in the counter affidavit of the Mandal Revenue Officer at paragraph No.4, the Executive has no power in the matter of burials and burial grounds in the panchayat area, and it is only the Gram Panchayat that can create and maintain a burial ground. Be it noted, under Section 87 of the Act a Gram Panchayat shall provide places to be used as burial or burning grounds or crematoria, and may charge rents and fees for the use thereof. If there is a need to have a burial ground for the people belonging to the downtrodden community, it is a matter for the consideration of the Gram Panchayat, and the District Panchayat Officer or the revenue officials have no say in the matter. Further, even according to respondent Nos.2 to 4, the Gram Panchayat has not issued any licence under Section 86 of the Act for the puntha being used as burial ground. Therefore, the Revenue Divisional Officer and the Mandal Revenue Officer as Executive Magistrates are bound to prevent any such improper use of the puntha for burial. Even in this regard, the learned Assistant Government Pleader for Panchayat Raj and the learned Standing Counsel for the Gram Panchayat do not seriously dispute the legal position.

Accordingly, for the above reasons, the Writ Petition is allowed, and there shall be no order as to costs.

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(V.V.S.RAO, J)

08.11.2005

Note: Despatch copy within one week.

B/o.

vs